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TAGS: [UNSC](#) [PREL](#) [PHUM](#) [PHSA](#) [FWWT](#) [KCRM](#) [SO](#) [XA](#) [XW](#)
SUBJECT: DRAFT UN SECURITY COUNCIL RESOLUTION ON SOMALI
PIRACY

REF: SAHA 11-02-09 E-MAIL RE: PIRACY RESOLUTION RENEWAL

¶1. Action Request: USUN is instructed to share the draft resolution in paragraph 2 with the members of the Security Council, and to report reactions to the Department. End request.

¶2. Begin text of draft UN Security Council 1846/1851 renewal resolution:

-- The Security Council,

-- i. Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), and 1851 (2008), (PP1 1851 updated)

ii. Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Africa, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law and the extended range of the piracy threat into the western Indian Ocean, (PP2 1846 updated)

iii. Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, (PP3 1846)

iv. Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, (PP4 1846 and 1851)

v. Again taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters, (PP5 1851)

vi. Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 2 November 2009 from the President of the TFG expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery off the coast of Somalia, and requesting that the provisions of resolutions 1846 (2008) and 1851 (2008) be renewed for an additional twelve months, (PP6 1851 updated and shortened)

vii. Commending the efforts of the EU operation Atalanta, NATO operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, India, Iran, Japan, Malaysia, People's Republic of China, Russia, Saudi Arabia, Seychelles, Yemen and other States acting in a national

capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, (PP7 1851 updated)

viii. Noting with concern that the continuing lack of capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, even when there is sufficient evidence to support prosecution, and reiterating that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, and stressing the need for all states to criminalize piracy under their domestic law and to favorably consider the prosecution of suspected pirates when their national interests are affected, (updated PP 9 1851)

ix. Commending the Republic of Kenya's significant efforts to prosecute suspected pirates in its national courts, and noting with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC) and other

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international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia, to support Kenya and other states in the region taking steps to prosecute or incarcerate captured pirates consistent with applicable international human rights law, (new PP)

x. Further noting with appreciation the ongoing efforts by UNODC and UNDP to support the authorities of the TFG, Somaliland and Puntland in their efforts to enhance the capacity of their corrections system to incarcerate convicted pirates consistent with applicable international human rights law, (new PP)

xi. Welcoming the adoption of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, the International Trust Fund Supporting Initiatives of the Contact Group on Piracy off the Coast of Somalia, and the establishment of the International Maritime Organization (IMO) Djibouti Code of Conduct Trust Fund, and recognizing the efforts of signatory states to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates, and the wider benefits these capacity-building efforts will have for a range of maritime security threats to the region, (new PP)

xii. Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia, (PP 10 1846)

xiii. Determining that the incidents of piracy and armed robbery against vessels in the waters off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region, (shortened PP 14 and 11 1846 and 1851)

-- Acting under Chapter VII of the Charter of the United Nations, (PP 15 1846 and PP12 1851)

¶1. Reiterates that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia; (OP 1 1846 and 1851)

¶12. Notes again its concern regarding the findings contained in the 10 December 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments are fueling the growth of piracy off the coast of Somalia, (OP 9 1851 revised)

¶13. Renews its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use; (OP 9 1846)

¶14. Welcomes the formation of the Contact Group on Piracy off the Coast of Somalia ("CGPCS") as a mechanism through which members may, in addition to sharing information through bilateral channels or through the United Nations, coordinate their efforts to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with each other, the IMO, flag States, and the TFG; (New OP, but includes elements from OP 7 1846)

¶15. Calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia (including regional authorities) and nearby coastal States upon their request to enhance the capacity of these states to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines; (edited OP5 1846)

¶16. Invites all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (&shipriders8) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia,

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provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention; (OP 3 1851)

¶17. Encourages Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in the fight against piracy and armed robbery at sea, and decides that for a period of twelve months from the date of this resolution, States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

a. Enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law;

b. Use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea; and

c. For the purpose of repressing acts of piracy and armed robbery at sea, undertake all necessary measures that are

appropriate in Somalia, pursuant to the request of the TFG, provided, however, that any measures undertaken pursuant to the authority of this paragraph shall be undertaken consistent with applicable international humanitarian and human rights law; (combined OP 10 of 1846 and OP 6 1851)

¶ 8. Affirms that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations, under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been provided only following the receipt of the 2 November 2009 letter conveying the consent of the TFG; (Updated OP 11 1846 and OP 10 1851)

¶ 9. Affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraphs 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007); (OP 12 1846 and OP 11 1851 combined)

¶ 10. Requests that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State; (OP 13 1846)

¶ 11. Calls on Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law; (updated OP 7 1851)

¶ 12. Calls upon all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution; (updated OP 14 1846)

¶ 13. Urges States parties to the SUA Convention to fully

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implement their obligations under said Convention and cooperate with the Secretary-General and the IMO to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia; (shortened OP 15 1846)

¶ 14. Welcomes the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, and urges States in collaboration with the shipping and insurance industries, and the IMO to continue to implement and develop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast

of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity; (updated OP 12 1851)

¶15. Requests States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authority provided in paragraph 7 above; (updated OP 16 1846)

¶16. Requests the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia; (edited 1846 OP 17)

¶17. Expresses its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 7 above for additional periods upon the request of the TFG; (OP 19 1846)

¶18. Decides to remain seized of the matter. (OP 20 1846 and OP 13 1851)

End Text.
CLINTON